

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL CASE NO. 1:11cv315

RUSSELL FRADY,

Plaintiff,

vs.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

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ORDER OF REMAND

THIS MATTER is before the Court on the Defendant's Unopposed Motion for Entry of Judgment under Sentence Four of 42 U.S.C. §405(g) with Reversal and Remand of the Cause to the Defendant. [Doc. 11]. The Plaintiff consents.

Sentence Four of 42 U.S.C. §405(g) provides, in pertinent part, that "[t]he court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." The parties here have moved for reversal of the decision of the Defendant and for remand because the Plaintiff's application for Title XVI

Supplemental Security Income was improperly denied without an initial medical determination because he had been accused of violating a condition of probation or parole. Clark v. Astrue, 602 F.3d 140 (2nd Cir. 2010).

Upon remand to the Commissioner, the Appeals Council shall instruct the Social Security Disability Determination Agency or the state agency to review the Plaintiff's claim for Title XVI Supplemental Security Income and to issue a medical determination and decision. The Appeals Council shall determine whether the Plaintiff's subsequent Title XVI claim filed on June 23, 2011 should be consolidated with this claim in accordance with HALLEX¹ I-4-2-101. The parties agree, however, that the Plaintiff's Title II claim does not have merit and, as a result, the Appeals Council will issue an unfavorable decision as to that claim adopting the finding of the Administrative Law Judge that the Plaintiff was not entitled to Title II Disability Insurance Benefits.

The Court finds that remand is appropriate. Melkonyan v. Sullivan, 501 U.S. 89, 111 S.Ct. 2157, 115 L.Ed.2d 78 (1991).

IT IS, THEREFORE, ORDERED that the Defendant's Unopposed Motion for Entry of Judgment under Sentence Four of 42 U.S.C. §405(g) with Reversal and Remand of the Cause to the Defendant [Doc. 11] is hereby

¹This is the acronym for the Social Security Administration Office of Hearings and Appeals Litigation Law Manual. Smith v. Astrue, 2012 WL 1313243 n.1 (W.D.N.C. 2012).

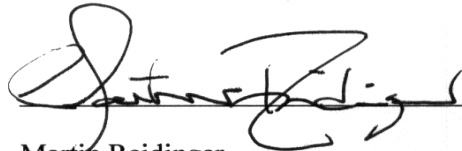
GRANTED.

IT IS FURTHER ORDERED that the decision of the Commissioner of Social Security is hereby **REVERSED** and the case is hereby **REMANDED**.

IT IS FURTHER ORDERED that upon remand, the Commissioner shall comply with the directives contained within this Order.

The Clerk of Court shall enter separate Judgment of Remand simultaneously herewith. The Clerk of Court is notified that this is a final judgment closing the case.

Signed: May 21, 2012


Martin Reidinger
United States District Judge

